

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

PEYTON HEMINGWAY,

Petitioner,

v.

JEREMY BEAU, *et al.*,

Respondents.

Case No. 2:24-cv-00156-MMD-DJA

ORDER

The Court granted Petitioner Peyton Hemingway's motion for appointment of counsel and entered an order appointing the Federal Public Defender for the District of Nevada ("FPD") as counsel for Petitioner. (ECF No. 3.) The FPD has filed a notice of conflict of interest. (ECF No. 6.) The Court's Criminal Justice Act (CJA) designee has located counsel willing to be appointed to represent the petitioner herein:

Alex Spelman  
3191 E. Warm Springs Road  
Suite 100  
Las Vegas, NV 89120  
(702) 832-0342  
A.Spelman@wintersspelman.com

It is therefore ordered that the Federal Public Defender is released as counsel.

It is further ordered that Alex Spelman is appointed to represent Petitioner *nunc pro tunc* to March 8, 2024. Mr. Spelman is a CJA panel attorney for the United States District Court, District of Nevada. Mr. Spelman will represent Petitioner in all future proceedings in this Court relating to this matter (including subsequent actions) and appeals under 18 U.S.C. § 3006A (a)(2)(B), until allowed to withdraw.

It is further ordered that CJA counsel Alex Spelman enter a notice of appearance within 20 days of the date of this order.

///

1 It is further ordered that CJA counsel for Petitioner meet with Petitioner as soon as  
2 reasonably possible to: (1) review the procedures applicable in cases under 28 U.S.C. §  
3 2254; (2) discuss and explore with Petitioner, as fully as possible, the potential grounds  
4 for habeas corpus relief in Petitioner's case; and (3) advise Petitioner that all possible  
5 grounds for habeas corpus relief must be raised at this time and that the failure to do so  
6 will likely result in the omitted grounds being barred from future review under the rules  
7 regarding abuse of writ.

8 It is further ordered that counsel for Petitioner file an amended petition for writ of  
9 habeas corpus within 90 days, including all known grounds for relief (both exhausted and  
10 unexhausted). Respondents will have 45 days after the filing of the amended petition to  
11 answer, or otherwise respond to, the amended petition. Any response filed must comply  
12 with the remaining provisions below, which are entered under Habeas Rule 5.

13 It is further ordered that any procedural defenses raised by Respondents in this  
14 case be raised together in a single consolidated motion to dismiss. In other words, the  
15 court does not wish to address any procedural defenses raised herein either in seriatim  
16 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural  
17 defenses omitted from such a motion to dismiss will be subject to potential waiver.  
18 Respondents must not file a response in this case that consolidates their procedural  
19 defenses, if any, with their response on the merits, except under 28 U.S.C. § 2254(b)(2)  
20 as to any unexhausted claims clearly lacking merit. Thus, if Respondents do seek  
21 dismissal of unexhausted claims under § 2254(b)(2): (1) they must do so within the single  
22 motion to dismiss not in the answer; and (2) they must specifically direct their argument  
23 to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d  
24 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion,  
25 should be included with the merits in an answer. All procedural defenses, including  
26 exhaustion, instead must be raised by motion to dismiss.

27 ///

28 ///

1 It is further ordered that, in any answer filed on the merits, Respondents specifically  
2 cite to and address the applicable state court written decision and state court record  
3 materials, if any, regarding each claim within the response as to that claim.

4 It is further ordered that Petitioner has 30 days from service of the answer, motion  
5 to dismiss, or other response to file a reply or opposition, with any other requests for relief  
6 by motion otherwise being subject to the normal briefing schedule under the local rules.

7 It is further ordered that any additional state court record exhibits filed herein by  
8 either Petitioner or Respondents be filed with a separate index of exhibits identifying the  
9 exhibits by number. The CM/ECF attachments that are filed further must be identified by  
10 the number of the exhibit in the attachment. Each exhibit must be filed as a separate  
11 attachment.

12 It is further ordered that the parties send courtesy copies of all pleadings and  
13 indices of exhibits only to the Reno Division of this court, Att: Staff Attorney, 400 S.  
14 Virginia St., Reno, NV, 89501.

15 DATED THIS 11<sup>th</sup> Day of March 2024.

16  
17 

18 MIRANDA M. DU  
19 CHIEF UNITED STATES DISTRICT JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28